

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division**

UNITED STATES, et al.,)	
)	
Plaintiffs,)	
v.)	No. 1:23-cv-00108-LMB-JFA
)	
GOOGLE LLC,)	
)	
Defendant.)	

MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFFS' MOTION TO SEAL

Pursuant to Local Civil Rule 5, Plaintiffs, through their undersigned counsel, hereby respectfully submit the instant memorandum of law in support of their motion to seal portions of and certain exhibits to their Opposition to Defendant Google LLC's Motion to Exclude the Testimony of Robin S. Lee ("Opposition"). The redacted portions contain information designated by Google and third parties as confidential or highly confidential under the parties' Protective Order (ECF No. 98 ¶ 23; ECF No. 203 (Modified Protective Order)). The unredacted brief and exhibits have been filed under seal electronically.

INTRODUCTION

Certain portions of exhibits to Plaintiffs' Opposition references material that Google and third parties have designated as confidential or highly confidential. Pursuant to paragraph 23 of the Protective Order, through this motion Plaintiffs inform the Court of the confidentiality designations of these materials and request that the Court seal the relevant materials in order to provide Google and third parties sufficient time to provide the Court with support for the need to seal the redacted portions of the exhibit. At this time, Plaintiffs take no position on the propriety of the underlying confidentiality designations by Google or any third party.

ARGUMENT

Public access to judicial records is “protected both by the common law and the First Amendment.” *Stone v. Univ. of Md. Med. Sys. Corp.*, 855 F.2d 178, 180 (4th Cir. 1988). “The common law presumes a right of the public to inspect and copy ‘all judicial records and documents.’” *Id.* (quoting *Nixon v. Warner Commc’ns, Inc.*, 435 U.S. 589, 597 (1978)). The common law presumption in favor of public access can be overcome only by a showing that a litigant has “some significant interest that outweighs the presumption.” *Rushford v. New Yorker Magazine, Inc.*, 846 F.2d 249, 253 (4th Cir. 1988). Accordingly, before ordering the sealing of a document, a district court must “(1) provide public notice of the request to seal and allow interested parties a reasonable opportunity to object, (2) consider less drastic alternatives to sealing the document[], and (3) provide specific reasons and factual findings supporting its decision to seal the document[] and for rejecting the alternatives.” *Ashcraft v. Conoco, Inc.*, 218 F.3d 288, 302 (4th Cir. 2000); *see also* Local Civ. R. 5(C).

Plaintiffs file this motion because the material was designated as confidential or highly confidential by Google and third parties in accordance with their obligations under paragraph 23 of the Protective Order. As stated in the notice filed concurrently with this memorandum, any interested member of the public and any other party or non-party may indicate its position on the motion.

CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court seal the portions of Plaintiffs’ Opposition that have been redacted, permit the redacted versions of the exhibits to Plaintiffs’ Motion to remain on the public docket, and permit the exhibits filed under seal to

remain under seal until such time as responsive briefs are filed and considered by the Court and remain under seal thereafter as the Court deems appropriate.

Dated: May 17, 2024

Respectfully submitted,

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